

## Federal Deposit Insurance Corporation

## § 313.41

### § 313.30 Requests for offset from other federal agencies.

Any federal agency may request that funds due and payable to its debtor by the FDIC be administratively offset by the FDIC in order to collect a debt owed to such agency by the debtor. The FDIC shall initiate the requested offset only upon:

(a) Receipt of written certification from the creditor agency stating:

(1) That the debtor owes the debt;

(2) The amount and basis of the debt; and

(3) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 31 CFR 901.3, including providing any required hearing or review.

(b) A determination by the creditor agency that collection by offset against funds payable by the FDIC would be in the best interest of the United States and that such offset would not otherwise be contrary to law.

§§ 313.31–313.39 [Reserved]

### Subpart C—Salary Offset

#### § 313.40 Scope.

These salary offset regulations are issued in compliance with 5 U.S.C. 5514 and 5 CFR part 550, subpart K, and apply to the collection of debts owed by employees of the FDIC or other federal agencies. These salary offset procedures do not apply where an employee consents to the recovery of a debt from his current pay account. These procedures do not apply to debts arising under the Internal Revenue Code, the tariff laws of the United States or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.*, travel advances under 5 U.S.C. 5705 and employee training expenses under 5 U.S.C. 4108). These procedures do not preclude an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, or in any way questioning the amount or validity of a debt, in the manner specified by law or these agency regulations. This section also does not preclude an employee from requesting waiver of the collection of a debt under any

other applicable statutory authority. When possible, salary offset through centralized administrative offset procedures should be attempted before seeking salary offset from a paying agency different than the creditor agency.

### § 313.41 Notice requirement where FDIC is creditor agency.

Where the FDIC seeks salary offset under 5 U.S.C. 5514 as the creditor agency, the FDIC shall first provide the employee with a written Notice of Intent to Offset at least 30 calendar days before salary offset is to commence. The Notice of Intent to Offset shall include the following information and statements:

(a) That the Director has determined that a debt is owed to the FDIC and intends to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full or otherwise resolved;

(b) The amount of the debt and the factual basis for the debt;

(c) A salary offset schedule stating the frequency and amount of each deduction, stated as a fixed dollar amount or percentage of disposable pay (not to exceed 15%);

(d) That in lieu of salary offset, the employee may propose a voluntary repayment plan to satisfy the debt on terms acceptable to the FDIC, which must be documented in writing, signed by the employee and the Director or the Director's designee, and documented in the FDIC's files;

(e) The FDIC's policy concerning interest, penalties, and administrative costs, and a statement that such assessments must be made, unless excused in accordance with the FCCS;

(f) That the employee has the right to inspect and copy FDIC records not exempt from disclosure relating to the debt claimed, or to receive copies of such records if the employee or the employee's representative is unable personally to inspect the records, due to geographical or other constraints:

(1) That such requests be made in writing, and identify by name and address the Director or other designated individual to whom the request should be sent; and

## § 313.42

## 12 CFR Ch. III (1–1–08 Edition)

(2) That upon receipt of such a request, the Director or the Director's designee shall notify the employee of the time and location where the records may be inspected and copied;

(g) That the employee has a right to request a hearing regarding the existence and amount of the debt claimed or the salary offset schedule proposed by the FDIC, provided that the employee files a request for such a hearing with the FDIC in accordance with § 313.42 that such a hearing will be conducted by an impartial official who is an administrative law judge or other hearing official not under the supervision or control of the Board;

(h) The procedure and deadline for requesting a hearing, including the name, address, and telephone number of the Director or other designated individual to whom a request for hearing must be sent;

(i) That a request for hearing must be received by the FDIC on or before the 30th calendar day following receipt of the Notice of Intent, and that filing of a request for hearing will stay the collection proceedings;

(j) That the FDIC will initiate salary offset procedures not less than 30 days from the date of the employee's receipt of the Notice of Intent to Offset, unless the employee files a timely request for a hearing;

(k) That if a hearing is held, the administrative law judge or other hearing official will issue a decision at the earliest practical date, but not later than 60 days after the filing of the request for the hearing, unless the employee requests a delay in the proceedings which is granted by the hearing official;

(l) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729 through 3731, or under any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or under any other applicable statutory authority;

(m) That the employee also has the right to request waiver of overpayment pursuant to 5 U.S.C. 5584, and may exercise any other rights and remedies available under statutes or regulations governing the program for which the collection is being made; and

(n) That amounts paid on or deducted from debts that are later waived or found not to be owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary.

### § 313.42 Procedures to request a hearing.

(a) To request a hearing, an employee must send a written request to the Director. The request must be received by the Director within 30 calendar days after the employee's receipt of the Notice of Intent.

(b) The request must be signed by the employee and must fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position. The request for hearing must state whether the employee is requesting an oral or documentary hearing. If an oral hearing is requested, the request shall explain why the matter cannot be resolved by a review of documentary evidence alone.

### § 313.43 Failure to timely submit request for hearing.

If the Director does not receive an employee's request for hearing within the 30-day period set forth in § 313.42(a), the employee shall not be entitled to a hearing. However, the Director may accept an untimely request for hearing if the employee can show that the delay was the result of circumstances beyond his or her control or that he or she failed to receive actual notice of the filing deadline.

### § 313.44 Procedure for hearing.

(a) *Obtaining the services of a hearing official.* When the FDIC is the creditor agency and the debtor is an FDIC employee, the FDIC shall designate an administrative law judge or contact any agent of another agency designated in